

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Gordon	Team: Team # 4	CCRB Case #: 200707705	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/30/2007 1:40 PM	Location of Incident: In front of 325 East 156th Street, The Andrew Jackson Senior Citizen Center.	Precinct: 40	18 Mo. SOL 11/30/2008	EO SOL 11/30/2008	
Date/Time CV Reported Thu, 05/31/2007 2:08 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/31/2007 2:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Acosta	11677	924863	PBBX TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gabriel Cotto	30799	928119	PBBX TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Acosta	Force: PO Daniel Acosta used physical force against § 87(2)(b)	
B.POM Daniel Acosta	Discourtesy: PO Daniel Acosta spoke rudely to § 87(2)(b)	

### Synopsis

On May 30, 2007, at approximately 1:40 PM, § 87(2)(b) was sitting outside of the Andrew Jackson Senior Citizen Center located at 325 East 156<sup>th</sup> Street in the Bronx when she observed § 87(2)(b) being chased by PO Daniel Acosta on foot. § 87(2)(b) was running westbound on the sidewalk and when in front of the location he tried to cross in between two cars into the street, whereupon he fell down. PO Acosta caught up to § 87(2)(b) kneeled down and began punching § 87(2)(b) in the torso several times, turned him over, handcuffed him and then continued punching § 87(2)(b) on the torso – he punched § 87(2)(b) a total of ten times (**Allegation A**). § 87(2)(b) approached PO Acosta and told him that he was committing police brutality and PO Acosta told her “You wouldn’t want § 87(2)(b) selling fucking drugs to your fucking grandchildren” (**Allegation B**). § 87(2)(b) was then transported from the scene in a marked patrol car.

Although there was an allegation of force against § 87(2)(b) he proved to be uncooperative in regards to this investigation. Phone calls were made to § 87(2)(b) on June 18 and 25, July 3 and 6 and August 1 of 2007. Please call letters were sent to § 87(2)(b) on July 2 and 25 and August 1 of 2007. § 87(2)(b)'s telephone was confirmed by his mother, § 87(2)(b) when the undersigned spoke to her on July 3 and 6, 2007. § 87(2)(b)'s full address was confirmed by his attorney, Allison Webster. As of the date of this closing report, none of the letters sent to this address have been returned to the CCRB. It was also established that § 87(2)(b) was not incarcerated at any point when the undersigned attempted to contact him. Despite all efforts to contact § 87(2)(b) as of the date of this closing, § 87(2)(b) has had no contact with the CCRB.

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

§ 87(2)(b) a § 87(2)(b) first reported this complaint to the CCRB through the call processing system on May 31, 2007 (**see enclosure 4**). She provided a phone statement on June 4, 2007 (**see enclosure 5a**). She was interviewed at her residence at § 87(2)(b) in the Bronx on June 8, 2007 (**see enclosure 5c**). Her statements were mostly consistent, but any discrepancies will be noted.

On May 30, 2007, at approximately 1:40 PM, § 87(2)(b) was sitting outside of the Andrew Jackson Senior Citizen Center located at 325 East 156<sup>th</sup> Street with about eight or nine others. She then saw a young black male, who appeared to be between 18 to 20 years old, was 5’8” or 5’9”, had an average build, 140 lbs. and was wearing a white sleeveless athletic shirt, blue jeans and perhaps a blue New York Yankees cap running along the sidewalk westbound from where Courtlandt Avenue intersects with East 156<sup>th</sup> Street (identified through investigation as § 87(2)(b) he was being chased by a male black officer in uniform (described as 5’6”, muscular and clean shaven and identified through investigation as PO Daniel Acosta). § 87(2)(b) was not holding anything and did not have a bag.

§ 87(2)(b) then tried to run from the sidewalk into the street, passing between two cars parked length-wise against the curb. § 87(2)(b) observed § 87(2)(b) fall down when he was either hit by or hit a dark grey sedan also moving westbound on East 156<sup>th</sup> Street from the direction of Courtlandt Avenue (which would have been the wrong way down this one way street) (**see enclosure 3**). § 87(2)(b)'s view was not obstructed by the parked cars, but she admitted that she did not explicitly see § 87(2)(b) hit the car and only assumed it.

§ 87(2)(b) assumed that this was an unmarked police car and was being driven by a white, blond haired male, whom § 87(2)(b) assumed was a police officer although she did not see this male with a gun or shield.

§ 87(2)(b) fell to the ground on his back about 50 to 60 feet from where § 87(2)(b) was seated and PO Acosta came up to him, knelt down and began punching him in the torso; § 87(2)(b) was not resisting. At this point, § 87(2)(b) approached the officer and told him that what he was doing was police brutality. The blond haired male got out of the car and was watching the punching.

PO Acosta instructed § 87(2)(b) to turn over so that he could handcuff him. PO Acosta turned § 87(2)(b) over and handcuffed him. He punched § 87(2)(b) again on his torso. Including the punching before the handcuffing, the officer punched § 87(2)(b) a total of 10 times. § 87(2)(b) repeated to PO Acosta that this was police brutality and PO Acosta told § 87(2)(b) “You wouldn’t want [the young man] selling fucking drugs to your fucking grandchildren.” § 87(2)(b) told PO Acosta, “You know that you are cursing at a senior citizen, you’re not supposed to use that language to anyone.” Then she asked PO Acosta for his name and shield number. § 87(2)(b) believed that PO Acosta has said that his name was “Dacosta” and that his shield was “1137.” PO Acosta then told § 87(2)(b) to get up and he put him in the unmarked car. § 87(2)(b) then walked back to where she had been sitting.

After the incident, about eight police cars and a van came to the scene and officers were there talking for about twenty to thirty minutes. Then they left.

There were other residents and employees of the senior citizen center but § 87(2)(b) did not want to provide their contact information because she did not want to get them involved now if they did not get involved during the incident; § 87(2)(b) was the only individual to approach the officer. There were also a number of people on the street who live in the surrounding buildings, but § 87(2)(b) did not know who these people were.

At some point, PO Acosta told § 87(2)(b) that they observed § 87(2)(b) selling drugs in front of a nearby school, which § 87(2)(b) assumed would have been P.S. 29 which is located at the corner of Courtlandt Avenue and East 156<sup>th</sup> Street.

### **Results of Investigation**

#### *Witnesses not interviewed*

This incident took place during the middle of the day outside of a senior citizen center. § 87(2)(b) stated that she was with others, although she adamantly refused to provide names and contact information for anyone she was with because she did not want to get them involved in the investigation. The undersigned requested that she pass on the number for the CCRB if anyone who had witnessed the incident wished to participate.

The undersigned conducted a field visit to the senior citizen center on June 8, 2007 (see **enclosure 17b**) in order to request that canvass letters be posted in the building. A female assistant there stated that she would ask the director, § 87(2)(b), if it was okay to post the letters. On June 18, 2007 (see **enclosure 6**), the undersigned contacted § 87(2)(b), an administrative assistant at the center and she stated that the letters had been posted and nobody had come forward as a witness. She also stated that she briefly witnessed the incident but did not see any officers strike § 87(2)(b) nor did she hear any officers speaking to civilians throughout the occurrence.

Without § 87(2)(b)'s assistance in identifying individuals who were at the scene, it would be nearly impossible, otherwise, to determine who witnessed this occurrence. Therefore, no witnesses were available to be interviewed in this investigation.

#### **Officer Statements**

##### *PO Daniel Acosta and PO Gabriel Cotto*

PO Daniel Acosta’s Memo Book (see **enclosure 8d**): May 30, 2007: (No time entry) – On under by PO Cotto for sale. 1805 – End of tour.

PO Gabriel Cotto's Memo Book (see enclosure 7c): May 30, 2007: 1417 – 1 under corner of East 156<sup>th</sup> Street and Courtlandt Avenue. 1945 – Transported to central booking. 0005 – § 87(2)(b), § 87(2)(g)

PO Daniel Acosta was interviewed at the CCRB on August 8, 2007 (see enclosure 8f). PO Gabriel Cotto was interviewed on July 26, 2007 (see enclosure 7i). On May 30, 2007, PO Acosta worked with PO Gabriel Cotto on a bike patrol assignment. Their tour was from 10:00 AM until 6:00 PM and PO Cotto reported doing overtime that day. They were in uniform and riding peddle bikes.

On May 30, 2007, at approximately 1:40 PM, PO Acosta and PO Cotto were on patrol in the vicinity of Courtlandt Avenue and East 154<sup>th</sup> Street. They were "hiding in the bushes" next to a basketball court located west of where East 154<sup>th</sup> Street ends in Courtlandt Avenue (see enclosure 3). PO Cotto observed from about 25 feet away, a male black, approximately 17 to 20 years old (identified through investigation as § 87(2)(b)) handing a small bag to a female in her mid-30s in exchange for US Currency at the corner of East 154<sup>th</sup> Street and Courtlandt Avenue (PO Cotto has been with the NYPD for six years and has had SNEU training during that time). PO Cotto then told PO Acosta that he "saw something" and pointed at the two individuals (PO Acosta admitted to not having seen the transaction himself).

PO Cotto and PO Acosta then began to approach the two individuals on their bikes and PO Cotto said, "Stop, don't move." § 87(2)(b) then began to run from PO Cotto and PO Acosta then began chasing after § 87(2)(b) on foot. PO Cotto followed behind. The female involved in the drug sale was walking away as PO Cotto approached § 87(2)(b) and was not apprehended that day. According to PO Cotto, § 87(2)(b) had dropped five clear bags of crack from his right hand at the point of the transaction.

During the chase, § 87(2)(b) kept a distance of about three to four feet ahead of PO Acosta. The chase was northbound and lasted from approximately the corner of East 154<sup>th</sup> Street and Courtlandt Avenue until approximately the corner of East 156<sup>th</sup> Street and Courtlandt Avenue, where § 87(2)(b) who had been dodging between parked cars, hit the bumper of a parked car (PO Acosta could not recall what kind of car or what color it was and PO Cotto did not witness this occur) and fell to the ground, into the street on his "ass." PO Acosta then approached. Meanwhile, PO Cotto was further behind PO Acosta because he could not run as fast as PO Acosta. PO Acosta did not know where PO Cotto was exactly because he was wholly concentrating on § 87(2)(b)

PO Acosta approached § 87(2)(b) he told him "Don't get up, don't move." At this point § 87(2)(b) began to sit up and roll his body toward PO Acosta and so PO Acosta took out his asp and struck § 87(2)(b) once on the left shoulder. § 87(2)(b) fell back down.

At this moment, an elderly black female, identified through investigation as § 87(2)(b) approached PO Acosta. She had come from a bench from in front of the senior citizen's home located at the corner of East 156<sup>th</sup> Street and Courtlandt Avenue. She stood next to PO Acosta and asked him why he hit § 87(2)(b) and PO Acosta told her something to the effect of "Ma'am step back." § 87(2)(b) again asked why PO Acosta hit § 87(2)(b) and PO Acosta told her such statements as, "Step back," "Go over there," "Mind your business" and "Get away from me." PO Acosta never used profanity in speaking to § 87(2)(b) and did not say anything to the effect of "You wouldn't like it if he was selling fucking drugs to your fucking grandchildren." PO Cotto also never heard this statement uttered at any point.

At the same time, § 87(2)(b)'s "friend," a young male, approached and asked PO Acosta, "Why did you hit my cousin?" PO Acosta did not know where he came from and also told this individual to "step back" and "Stay away from me." § 87(2)(b) had had a crumpled piece of paper in one of his hands that contained crack cocaine and he threw this under a black sedan which had drove up and stopped behind PO Acosta in the street. § 87(2)(b) appeared as if he was going to get up again and try to escape and PO Acosta still had his asp out and was telling § 87(2)(b) not to move while also trying to tell § 87(2)(b)'s cousin and § 87(2)(b) to back away from him while he did his job. Neither § 87(2)(b) nor § 87(2)(b)'s cousin tried to get physically involved in the arrest except that they were standing nearby

PO Acosta. Nobody else came up to inquire into the arrest. At this point, PO Acosta was the only officer on the scene and § 87(2)(b) was not handcuffed at this point.

PO Acosta could not recall how long the above scenario lasted. But, within “a couple of seconds,” PO Cotto had arrived at the location where § 87(2)(b) fell down and “a couple” of patrol cars, marked and unmarked, had driven past and stopped. PO Acosta did not know how these other officers were called to the scene because he did not make a radio call. PO Cotto stated that an additional unit had been called for transporting § 87(2)(b) back to the stationhouse.

It was not until this point that PO Acosta handcuffed § 87(2)(b) with the help of PO Cotto and some of the other officers that had arrived; PO Acosta did not know which officers these were.

There were parked cars in the street, about ten feet away from where § 87(2)(b) was apprehended, but PO Cotto could not recall if there was a dark sedan and the driver of the car near to where § 87(2)(b) was apprehended.

When PO Cotto arrived at the location of apprehension, he did not see PO Acosta with his asp out and had not seen PO Acosta strike § 87(2)(b) in any way. After having § 87(2)(b) handcuffed, PO Cotto went back to where the officers had first observed the transaction to get their bikes and property while PO Acosta stayed with § 87(2)(b).

Neither PO Acosta nor any other officers punched § 87(2)(b) in the body at any point before or after § 87(2)(b) was handcuffed. § 87(2)(b) was not struggling with the officers while or after being handcuffed. PO Acosta then asked the individual driving the black sedan (for whom he could not recall a description) to move his car and PO Acosta then recovered the package of crack that § 87(2)(b) had thrown.

Outside of the senior citizen center, there was a “crowd” of people. Neither PO Cotto nor PO Acosta spoke to any of these people. After the police arrived, § 87(2)(b) s “friend” or cousin left the scene.

After the incident, § 87(2)(b) exhibited no injuries and was not complaining of any. § 87(2)(b) and PO Acosta were then transported together to the 40<sup>th</sup> Precinct stationhouse in a marked car, but PO Acosta could not recall who had made the transport. PO Acosta did not recall an ambulance being sent to the scene and did not recall Sgt. James Phillips, who verified the arrest as per the arrest report, being at the scene.

#### *Officer Identification*

PO Gabriel Cotto was identified as he was the reporting officer on § 87(2)(b) s arrest paperwork. The roll call then indicated that PO Daniel Acosta was his partner for the day and this agreed with the fact that § 87(2)(b) provided the name “Dacosta” in he initial interview (although not exact, it was a close enough approximation and her description did match with PO Acosta). Both officers confirmed their role in the incident in their CCRB interviews.

#### *Officers not interviewed*

By all accounts, other officers did arrive at the scene. PO Acosta and PO Cotto indicated that this occurred as § 87(2)(b) was being handcuffed and after the alleged discourtesy had been uttered.

However, § 87(2)(b) insisted that there was a Caucasian male with blond hair driving an unmarked car at the scene during the entire incident. However, based on the officers’ statements and the fact that this male neither appeared to have a shield or a gun and made no attempt to assist in the apprehension of § 87(2)(b) it is not certain that this individual was actually a police officer. The sprint print-out (see **enclosure 13**) seems to reflect the officers’ statements that all responding officers arrived at the scene after the bike patrol unit radioed that they already had arrested § 87(2)(b). Just to be sure, photos of the only two anti-crime officers working in the 40<sup>th</sup> Precinct at the time of the incident (PO Raymond Gonzalez

and PO Angel Ortiz) were ordered (see enclosure 9), they were both dark haired Hispanic males and the Anti-Crime supervisor (Sgt. William Estrada) was also a Hispanic male.

Because of these factors, it is unlikely that there would be any way to identify this blond haired male. Even if this individual were an officer, it is unlikely that his testimony would have altered the recommended dispositions of this investigation. Therefore, no other officers were interviewed.

## **PD Documents**

### *Sprint Print-Out (see enclosure 13)*

At 1:57 PM, the bike patrol goes over the radio to request an “impact sergeant” to advise a situation already “under control.” At the same time, a 40<sup>th</sup> Precinct sergeant arrives at the scene. At 1:58 PM, “bike patrol” goes over the radio stating that there is one under from the location. At 1:58 PM, the 40<sup>th</sup> Precinct officers assigned to sector G arrive at the scene, as do “40sp42.” At 2:04 PM, 40<sup>th</sup> Precinct officers assigned to sector H transport “one perp and one MOS” to stationhouse.” EMS had arrived at the scene at 2:02 PM and was no longer needed at 2:05 PM.

### *UF-61 Complaint Report and OLBS Arrest Report (see enclosure 7)*

PO Cotto wrote the following for § 87(2)(b) s arrest: “at tpo perp was observed by police officer make an exchange of u.s. currency from unapprehended buyer for small quantity of alleged crack cocaine. When attempting to place perp under arrest perp resisted and a pursuit ensued (sic). Search incidental to lawful arrest 5 small clear bags of alleged crack cocaine were recovered from perps right hand.” The OLBS stated that a nightstick or blunt instrument was used to prevent escape and the § 87(2)(b) did not use force against the officers. § 87(2)(b) was charged with criminal possession of a controlled substance in the seventh degree and two counts of resisting arrest. The supervising officer for the arrest was Sgt. James Phillips.

### *Criminal Court Complaint (see enclosure 7)*

PO Cotto, the deponent, stated in this report that § 87(2)(b) did knowingly and unlawfully possess a controlled substance (“5 (five) bags each containing a white, rock-like substance”). PO Cotto’s experience and the packaging of the substance lead him to believe that the substance was crack cocaine. § 87(2)(b) also intentionally prevented or attempted to prevent a police officer from affecting an authorized arrest of himself. PO Cotto further stated that § 87(2)(b) “swung and flailed his arms so as not to be handcuffed.”

### *Property Vouchers (see enclosure 11)*

Two property vouchers list the following items as evidence in § 87(2)(b) s arrest: one 10 dollar bill of US currency, one five dollar bill of US currency, 27 one dollar bills of US currency, and five “clear bags of alleged crack cocaine.”

§ 87(2)(b), § 87(2)(c) (impair contract awards or

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§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

### **Complainant's CCRB History**

This is § 87(2)(b)'s first and only CCRB complaint (see enclosure 2).

### **Officers' CCRB History**

PO Daniel Acosta has been with the NYPD for seven years and has not been the subject officer of any substantiated CCRB allegations (see enclosure 1).

## **Conclusions and Recommendations**

### **Undisputed Facts**

It is undisputed that § 87(2)(b) was arrested after being chased by PO Daniel Acosta. Further, PO Acosta admitted that he struck § 87(2)(b) once on his left shoulder. During this arrest, § 87(2)(b) approached PO Acosta and asked something to the effect of why he hit § 87(2)(b). PO Acosta and PO Gabriel Cotto handcuffed § 87(2)(b) and other police units began to arrive at the scene.

### **Disputed Facts**

It is disputed whether PO Acosta ever punched § 87(2)(b) at any point during the arrest and whether PO Acosta ever spoke discourteously towards § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

### **Analysis of Allegations**

#### *Allegation not pleaded*

Although PO Acosta admitted to removing his baton and striking § 87(2)(b) with it, this was not alleged by § 87(2)(b) in her complaint and § 87(2)(b) did not cooperate with this investigation. Therefore the allegation has not been pleaded.

#### **Allegation A: Force: PO Daniel Acosta used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Acosta continuously punched § 87(2)(b) in his torso while apprehending him. As detailed at the beginning of this report, § 87(2)(b) had demonstrated that he did not wish to

participate in this investigation after numerous unsuccessful attempts to contact him. § 87(2)(g)

**Allegation B: Discourtesy: PO Daniel Acosta spoke rudely to § 87(2)(b)**

After § 87(2)(b) approached PO Acosta and told him that what he was doing was police brutality, PO Acosta allegedly told § 87(2)(b) that “[She] would not like it if § 87(2)(b) was selling fucking drugs to [her] fucking grandson.” It is not out of the realm of possibility that PO Acosta may have used strong language towards § 87(2)(b) because she was addressing him while he was in the middle of apprehending a suspect who he had to chase by foot. While PO Acosta admitted to using a phrase like “Get away from me” towards § 87(2)(b) he denied ever using any profanity when speaking to her. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: